IN THE

Supreme Court of the United States

OCTOBER TERM, 1925.

No. 91.

THE UNITED STATES, *Appellant*,

vs.

ST. LOUIS, SAN FRANCISCO & TEXAS RY. CO.

No. 92.

THE UNITED STATES, *Appellant*,

vs.

WABASH RAILWAY COMPANY.

Appeals from the United States Court of Claims.

BRIEF, AS AMICI CURIAE.

Statement.

The writers of this brief represent the Southern Pacific and other railroad companies, which companies have a number of cases pending in the Court of Claims involving the issue raised by the Government in the above appeals as to whether the three-year limitation in the Interstate Commerce Act (as amended by the Transportation Act of February 28, 1920, and an Act approved June 7, 1924), with respect to the institution of "actions at law" by carriers subject to said Act for the recovery of their charges, applies to claims against the United States of railroad companies in the Court of Claims growing out of their charges for

Government transportation, in view of the general limitation of six years fixed by the Judicial Code with respect to proceedings in the Court of Claims.

In certain prior decisions the Court of Claims held that said three-year limitation in the Interstate Commerce Act did apply, under certain circumstances, to proceedings in that court by railroad companies for the establishment of claims against the United States growing out of transportation services rendered the Government, and it reasserted that view in the two cases now on appeal to this court in which this brief is being filed, although it did not actually apply said statute, its failure to do so, under the circumstances disclosed by its findings of fact in these cases, being alleged as error by counsel for the Government.

This brief will be confined entirely to a discussion of the question whether said three-year limitation in the Interstate Commerce Act was intended to apply *at all* to proceedings of the character stated by railroad companies in the Court of Claims, it being the contention of the writers of this brief that it does not apply to such proceedings under any circumstances.

THE LAW.

By the Transportation Act of 1920 (41 Stat., 491, 492), Section 16 of the Interstate Commerce Act was amended by the addition of the following paragraph (Italics ours):

> "(3) *All actions at law by carriers subject to this Act for recovery of their charges, or any part thereof, shall be begun within three years from the time the cause of action accrues, and not after.* All complaints for the recovery of damages shall be filed with the Commission within two years from the time the cause of action accrues, and not after, unless the carrier, after the expiration of such two years or within ninety days before such expiration, begins an action for recovery of charges in respect of the same service, in

which case such period of two years shall be extended to and including ninety days from the time such action by the carrier is begun. *In either case the cause of action in respect of a shipment of property shall, for the purposes of this section, be deemed to accrue upon delivery or tender of delivery thereof by the carrier, and not after.* A petition for the enforcement of an order for the payment of money shall be filed in the district court or State court within one year from the date of the order, and not after."

The above statute was amended (but not materially changed, so far as the question under consideration here is concerned) by the Act approved June 7, 1924, chap. 325 (43 Stat. 633) and now reads as follows (Italics ours):

"(3) (a) *All actions at law by carriers subject to this Act for recovery of their charges, or any part thereof, shall be begun within three years from the time the cause of action accrues, and not after.*

(b) All complaints against carriers subject to this Act for the recovery of damages not based on overcharges shall be filed with the commission within two years from the time the cause of action accrues, and not after, subject to subdivision (d).

"(c) For recovery of overcharges action at law shall be begun or complaint filed with the Commission against carriers subject to this Act within three years from the time the cause of action accrues, and not after, subject to subdivision (d), except that if claim for the overcharge has been presented in writing to the carrier within the three-year period of limitation said period shall be extended to include six months from the time notice in writing is given by the carrier to the claimant of disallowance of the claim, or any part or parts thereof, specified in the notice.

"(d) If on or before expiration of the two-year period of limitation in subdivision (b) or of the three-year period of limitation in subdivision (c) a carrier subject to this Act begins action under subdivision (a) for recovery of charges in respect of the same transportation service, or, without beginning action, collects

charges in respect of that service, said period of limitation shall be extended to include ninety days from the time such action is begun or such charges are collected by the carrier.

"(e) *The cause of action in respect of a shipment of property shall, for the purposes of this section, be deemed to accrue upon delivery or tender of delivery thereof by the carrier, and not after.*

"(f) A petition for the enforcement of an order of the commission for the payment of money shall be filed in the district court or the State court within one year from the date of the order, and not after.

"(g) The term 'overcharges' as used in this section shall be deemed to mean charges for transportation services in excess of those applicable thereto under the tariffs lawfully on file with the commission.

"(h) *The provisions of this paragraph* (3) *shall extend to and embrace cases in which the cause of action has heretofore accrued as well as cases in which the cause of action may hereafter accrue,* except that actons at law begun or complaints filed with the Commission against carriers subject to this Act for the recovery of overcharges where the cause of action accrued on or after March 1, 1920, shall not be deemed to be barred under subdivision (c) if such actions shall have been begun or complaints filed prior to enactment of this paragraph or within six months thereafter."

ARGUMENT.

I.

The Three-Year Limitation in the Interstate Commerce Act Added by the Transportation Act of 1920, With Respect to "Actions at Law" by Carriers for Recovery of Their Charges, Applies Only to Suits of That Character in the Ordinary Courts of Law Against Private Shippers, and Does Not Apply to Claims Filed by Such Carriers in the Court of Claims on Account of Transportation Services Rendered the United States.

The correctness of the above proposition is apparent from—

(1) The language of said provision of the Interstate Commerce Act.

(2) The purpose for which said three-year limitation was enacted, as disclosed in the Interstate Commerce Act.

(3) The long-established relations between the railroads and the United States with respect to Government transportation at the time of the passage of the Transportation Act, and which were recognized and confirmed thereby.

(4) The fact that a proceeding in the Court of Claims is *sui generis* and a matter of express regulation by Congress.

We shall consider first the legislation of Congress with respect to the jurisdiction of the Court of Claims.

Section 145 of the Judicial Code provides that the Court of Claims shall have jurisdiction to determine, among other things (Italics ours)—

> "First. All *claims* (except for pensions) founded upon the Constitution of the United States or any law of Congress, upon any regulation of an Executive Department, upon any contract, express or implied, with

> the Government of the United States, or for damages, liquidated or unliquidated, in cases not sounding in tort, in respect of which claims the party would be entitled to redress against the United States either in a court of law, equity, or admiralty, if the United States were suable: * * *"

Section 156 of the Judicial Code (36 Stat. 1139) provides (italics ours):

> "Every *claim* against the United States cognizable by the Court of Claims, shall be forever barred unless *the petition setting forth a statement thereof* is filed in the court, or transmitted to it by the Secretary of the Senate or the Clerk of the House of Representatives, as provided by law, within six years after the *claim* first accrues: * * *"

Notwithstanding these express provisions with reference to the jurisdiction of the Court of Claims, and that *six years* is authorized by said statutes for the filing of "*every claim* against the United States cognizable by the Court of Claims," the Court of Claims has ruled that *a petition by a railroad company in that court for the establishment of a claim against the United States* growing out of the transportation of persons or property for the Government, is an "action at law" within the meaning of the aforesaid amendment to the Interstate Commerce Act made by the Transportation Act of 1920, and is barred unless brought within three years from the time such transportation service was performed.

A careful analysis, however, of said provision of the Transportation Act of 1920 will show that such was not the intention of Congress.

In order to understand the scope of said provision of the Transportation Act of 1920 with respect to "actions at law" by carriers for the collection of their charges, it is necessary to consider the objects sought to be attained by Congress in the Act to Regulate Commerce.

As this court has said, the Interstate Commerce Act, in addition to assuring just and reasonable charges for transportation, is intended, among other things, "to prohibit unjust discriminations in the rendition of like services under similar circumstances and conditions; to prevent undue or unreasonable preferences to persons, corporations or localities." (*Interstate Commerce Commission v. Baltimore & Ohio R. R. Co.*, 145 U. S. 263.)

The discriminations and preferences to which the Interstate Commerce Act is directed, however, *have reference entirely to discriminations and preferences with respect to private individuals, natural or corporate*, as the Act does not inhibit discriminations and preferences with respect to Governmental agencies, Federal or State. On the contrary, Congress provided, in Section 22 of the Act as originally passed—

> "That nothing in this Act shall prevent the carriage, storage or handling of property free or at reduced rates for the United States, State, or municipal governments."

So also, in the Transportation Act of 1920, in amending Section 3 of the Interstate Commerce Act (which, as originally enacted, made it unlawful for any common carrier to give undue or unreasonable preference to any person, company, firm, corporation or locality, etc.,) by providing that (Italics ours)—

> "(2) From and after July 1, 1920, no carrier by railroad subject to the provisions of this Act shall deliver or relinquish possession at destination of any freight transported by it until all tariff rates and charges thereon have been paid, except under such rules and regulations as the Commission may from time to time prescribe *to assure prompt payment of all such rates and charges and to prevent unjust discrimination*"—

Congress was careful to add thereto the following proviso (Italics ours):

"*Provided,* That the provisions of this paragraph *shall not be construed to prohibit any carrier from extending credit in connection with rates and charges on freight transported for the United States,* for any department, bureau, or agency thereof, or for any State or Territory or political subdivision thereof, or for the District of Columbia."

This proviso was added because, at the time of the passage of the Transportation Act of 1920, and long prior thereto, it had been the *authorized and required* practice of common carriers by railroad to transport persons and property for the Government of the United States without requiring prepayment of their charges for the persons transported or payment upon delivery for property transported; persons being transported upon Government transportation requests issued by the various departments of the Government, and property being transported upon Government forms of bills-of-lading prescribed by the Comptroller of the Treasury and approved by the Secretary of the Treasury, pursuant to law (14 Comp. Dec. 967, *et seq.*); payment for such transportation being subsequently made by the Government upon the presentation by the carriers of their bills for the charges therefor accompanied by the Government transportation requests or the accomplished bills-of-lading, such payment being made as the convenience of the Government system of auditing and disbursement, and other exigencies, required.

Thus, the form of Government bill of lading prescribed by the Comptroller of the Treasury and approved by the Secretary of the Treasury, as aforesaid, contains the following, among other conditions (14 Comp. Dec. 971):

"It is mutually agreed and understood between the United States and carriers who are parties to this bill of lading that—

"1. Prepayment of freight charges will in no case be demanded by carriers. Upon surrender of this bill of lading duly accomplished payment will be made to

the last carrier, except where otherwise specifically stipulated."

Said form of Government bill of lading also contains the following, among other instructions (*Ib.* p. 971):

> "8. Only one copy of a bill of lading will be issued for a single shipment. This bill, when receipted by the agent of the receiving carrier, will be returned to the consignor and by him mailed to the consignee, who will, upon receipt of the shipment, accomplish and surrender the bill to the last carrier. This bill then becomes the evidence upon which settlement for the service will be made."

It will be noted that *it is the duty of the Government agent named as consignee in the Government bill of lading to accomplish the same and surrender it to the last carrier,* and that said accomplished bill of lading must then be presented to the Government disbursing officer by the last carrier in support of its claim for the entire transportation charges. In practice, the accomplishment and surrender of the bill of lading by the Government agent to the last carrier often takes months, and even years. Sometimes the bill of lading is lost through the negligence of the agents of the Government, in which event it becomes necessary for the last carrier to obtain a certificate in lieu thereof, as provided in paragraph 11 of the instructions on the reverse side of the Government form of bill of lading (*ib.* 971), before it can demand payment for the transportation covered thereby of the Government. *Manifestly, therefore, no cause of action against the Government accrues upon a shipment of property for the United States until the bill of lading is accomplished and presented by the last carrier to the proper disbursing officer of the Government, with a demand for payment, and payment is refused,* (or a certificate in lieu of said accomplished bill of lading is presented with the demand for payment, and payment is refused.)

Bearing these facts in mind, it is at once apparent that,

in amending Section 16 of the Interstate Commerce Act so as to provide (paragraph 3) that "all *actions at law* by carriers subject to this Act for recovery of their charges, or any part thereof, shall be begun within three years *from the time the cause of action accrues, and not after,*" and further providing that "the cause of action in respect of a shipment of property shall, for the purposes of this *section,* be deemed to accrue *upon delivery or tender of delivery thereof by the carrier, and not after,*" Congress could not have intended to include in said limitation proceedings by said carriers against the United States in the Court of Claims for the establishment of any amount or balance claimed to be due the carriers on account of transportation services rendered the Government, *because so to hold would be to make the three-year statute of limitations provided by the Transportation Act run against a carrier during the period of credit expressly authorized by the Transportation Act, and required by the bill of lading, to be extended to the Government.*

The purposes of Congress in providing that the three-year period in which carriers should institute "actions at law" for the recovery of their charges *should begin to run from the time of the delivery of the shipment or tender thereof,* were manifestly the same as those which caused it to provide that, from and after July 1, 1920, no carrier by railroad subject to the Interstate Commerce Act should deliver or relinquish possession at destination of any freight transported by it until all tariff rates and charges have been paid, except under such rules and regulations as the Commission may from time to time adopt *to assure prompt payment and to prevent unjust discrimination;* that is to say, Congress regarded the extension of credit by said carriers *to private shippers,* whether individual or corporate, as amounting to a preference to the favored shipper and an unjust discrimination against other shippers not so favored. But the United States, as well as other Governmental bodies and agencies, did not come within this policy of

Congress, and therefore Congress expressly authorized the extension of credit to such bodies or agencies.

And as, under the Government system of accounting, the settlement of the carrier's bill or voucher (the forms for which are also prescribed by Government regulation, 14 Comp. Dec. 977-978) is not a matter of immediate adjustment, but may involve delays running into months and years, during which credit is necessarily required to be extended by the carrier to the Government, the injustice of adopting an interpretation of the provision of the Transportation Act of 1920 under consideration which would require it to be held that the carrier's right to recover its charges for Government transportation (by suit in the Court of Claims) accrued upon delivery of the shipment, or tender thereof, is all the more apparent.

We submit that this analysis of the Transportation Act of 1920 makes it perfectly clear that Congress did not intend to include suits against the United States in the Court of Claims by carriers by railroad subject to the Interstate Commerce Act within the three-year limitation imposed by the Transportation Act of 1920 upon "actions at law" generally by such carriers for the collection of their charges.

That the purpose of Congress is to be considered and all the provisions of the Transportation Act of 1920 to be examined for the purpose of determining the correct construction of the three-year statute of limitations provided thereby is obvious.

In *Dupont De Nemours & Co. v. Davis*, 264 U. S. 456, upon a full consideration of the statute, it was held that the Director General of Railroads was not a "carrier" within the meaning of the three-year limitation in the Transportation Act as to actions at law by carrier subject to the Act to Regulate Commerce, although paragraph (3) of Section 1 of said Act provides that the term "common carrier" as used therein shall include "all persons, natural or artificial, engaged in such transportation or transmission as common carriers for hire."

This court, in that case, pointed out that Congress had dealt with the subject of Federal control of railroads in a separate Title of the Transportation Act, and said that, "if Congress had intended to fix a period of limitation applicable to actions, suits or proceedings brought in behalf of the United States in respect of liabilities arising out of Federal control, we should naturally expect to find it in Title II, where such matters are exclusively dealt with, and not in Title IV, which deals with common carriers entirely apart from such control." (*Ib.* p. 461.)

So here, since Congress has, by special statute, expressly regulated the subject of proceedings against the United States in the Court of Claims, and provided the same period of limitation (six years) with respect to *every* claim against the United States in that court, it is not to be presumed, *in the absence of clear and convincing reasons to the contrary*, that Congress intended, by the provision in the Transportation Act of 1920 referred to (which deals with another and very distinct subject-matter) to reduce said six-year period of limitation to *three* years so far as concerns proceedings by railroad companies in the Court of Claims, and leave to all other claimants against the United States in the Court of Claims a period of *six* years in which to bring their suits.

As above shown, no such clear and convincing reasons exist for such a construction of said provision of the Transportation Act of 1920, but, on the contrary, considering the purpose of Congress, as set forth in that Act and in the Interstate Commerce Act as a whole, proceedings by the railroads in the Court of Claims to establish claims against the United States growing out of their charges for Government transportation, do not come within the purpose of Congress as exemplified in said Interstate Commerce Act, which, as above stated, was to prevent such carriers from unjustly discriminating in their rates and charges between private shippers.

II.

The Three-Year Limitation in the Interstate Commerce Act Does Not Cover, Even in Terms, Petitions by Carriers in the Court of Claims.

Aside from what has been said above as to the manifest purpose of Congress in providing, in the Transportation Act, said three-year limitation with respect to "actions at law" by carriers for the collection of their charges, it is to be observed that the language used in said provision is not such as would ordinarily be employed to cover proceedings in the Court of Claims. The expression "*actions at law*" is not an apt one to use with respect to a petition in the Court of Claims for the establishment of a "claim" against the United States. Such a proceeding is *sui generis*. It is a privilege granted by the Government by *special statute* to be exercised in accordance with the restrictions contained in said statute, and not otherwise.

The Act establishing and defining the jurisdiction of the Court of Claims refers to "*claims*" against the United States, not "*causes of action*," and draws a distinction between a proceeding in that court and a suit in "a *court of law*, equity, or admiralty." (See Sec. 145, subdivision "First", Judicial Code, above quoted.)

So also, in fixing the period of limitation as to proceedings in the Court of Claims, Congress provided that "every *claim*" (not "*cause of action*") should be barred unless "the *petition* setting forth a statement thereof" (not "*action*" or "*suit*") is filed "within six years after the *claim* first accrues." (See Sec. 156, Judicial Code, *supra*.)

In brief, a petition in the Court of Claims is not an "action at law" to enforce a legal right against the United States, but merely a proceeding to establish a "claim" against the Government as a foundation for an appropriation by Congress, which appropriation, while usually made as a matter of course, may nevertheless be withheld.

We submit, therefore, that claims of railroad companies

against the United States in the Court of Claims on account of Government transportation do not come within either the letter or the spirit of the three-year limitation in the Interstate Commerce Act with respect to actions at law by carriers for the collection of their charges; and, furthermore, that to extend said limitation to such claims would defeat the expressed purpose of Congress in regard to the extension of credit to the United States for Government transportation and interfere with the long-established and required practice in that regard.

III.

In Passing Upon the Scope of the Three-Year Limitation in the Interstate Commerce Act with Respect to "Actions at Law" by Carriers for the Collection of Their Charges, the Court of Claims Failed to Give Due Consideration to the Purpose of Congress in Enacting Such Provision, and Also Failed to Consider the Established Policy of Congress with Respect to Transportation Services Rendered by Such Carriers for the Government.

An examination of the several decisions of the Court of Claims in which it has announced (although only in one instance applied) the view that the three-year statute of limitations in the Transportation Act applies to suits by railroad companies against the Government in the Court of Claims based upon the transportation of persons and property for the Government, shows that said court reached its said conclusion without any careful analysis of this and other provisions of the Transportation Act of 1920 or a consideration of the purpose of Congress in the Interstate Commerce Act as a whole. This failure of the Court of claims was probably due to the fact that the court, in the case in which this conclusion was first announced, was not really called upon to construe and apply said provision. The case referred to is *Western Pacific Railroad Company v. The United States* (59 C. Cls. 67), decided January 7,

1924. We quote in full the remarks of the Court of Claims on the question we are here considering (*ib.*, p. 81):

> "*While the foregoing would dispose of the plaintiff's case,* a statute is called to our attention that should receive consideration. This is section 424 of the Transportation Act of 1920, amending section 16 of the Interstate Commerce Act. See 41 Stat. 491. Manifestly a large part of plaintiff's asserted claim is barred by the statute of limitations of six years, suit not having been brought until February 2, 1921. The Government contends in cases similar to this that the limitation statute in the Trasportation Act of 1920 is applicable. It provides that: '(3) All actions at law by carriers subject to this act for recovery of their charges, or any part thereof, shall be begun within three years from the time the cause of action accrues, and not after.' *The language is inclusive of the kind of actions brought by plaintiff.* It is seeking to recover its published tariff rates as applicable to certain Government employees less the amounts which it claims to have received as part payment only of its bills. Prescribing a statutory limitation of actions different from the general statute applicable to suits in the Court of Claims is not without precedent. To illustrate: Suits to recover taxes erroneously or illegally collected may be brought, but the limitation of actions is less than six years. (Rev. Stat. sec. 3227.) [*] The remedial purposes of the prescribed limitation of actions by transportation companies can very well extend to suits against the Government if suits like the instant one can be maintained at all. The Interstate Commerce Act, 24 Stat. 379, 387, limits the application of the Act as regards handling property of the United States, but the limitation of actions provided by the late statute does not, in terms at least, except suits against the Government by railroad companies. See

*This court's attention is called to the fact that Sec. 3227, Rev. Stat. U. S., referred to by the Court of Claims, is much more comprehensive in its terms than the statute under consideration: "No suit *or proceeding* for the recovery of any internal tax alleged to have been collected without authority," etc., "shall be maintained *in any court*, unless the same is brought within two years next after the cause of action accrued." Besides, a proceeding in the Court of Claims to recover any such tax comes within the purpose of this inhibition as much as a suit in any other court.

United States v. Baltimore & Ohio R. R. Co., 80 I. C. C. 143."[†]

It appears from the opinion in said case of the Western Pacific Railroad Company that the Court of Claims based its conclusion that the three-year limitation in the Transportation Act of 1920 applied to proceedings by carriers subject to the Act in that court entirely upon the language of said provision of the Transportation Act, which it thought "inclusive of the kind of actions brought by plaintiff," without either carefully considering the term "*actions at law*," used therein, or the purpose of Congress in enacting said provision, or the policy of Congress with respect to Government transportation as elsewhere expressed in the Interstate Commerce Act as so amended.

It is true that the Court of Claims said, in that opinion, that "the remedial purposes of the prescribed limitation of actions by transportation companies can very well be extended to suits against the companies," but it failed to analyze the pertinent provisions of the Act to Regulate Commerce as amended by said Transportation Act for the purpose of determining what such "remedial purposes" were.

So, in *Missouri, Kansas & Texas Ry. Co. v. United States*, 59 C. Cls. 318 (decided March 3, 1924), the court said, at pages 321-322:

> "The only defense attempted to be interposed in this case is the statute of limitations of three years contained in the Transportation Act of February 28, 1920, 41 Stat. 492. Unless that limitation applies the plaintiff is clearly entitled to a judgment. We have indicated in former opinions that the statute does apply to suits by carriers against the Government, *but it has*

†This reference of the Court of Claims may be misleading, because the case cited was not a proceeding by a railroad company against the United States for the collection of its charges, but a reparation proceeding before the Interstate Commerce Commission brought by the United States against the Director General of Railroads as agent for the Baltimore & Ohio Railroad Company. In a proceeding for reparation before said Commission the United States stands in the same position as any other shipper, although whether it should be held included in the statute of limitations governing such complaint, even if not specifically excepted, is another question.

not been necessary in these former cases to apply the statute. Expressions in some of these cases may be responsible for the contention here made that the plaintiff's cause of action accrued more than three years before suit was brought. But the rule is well settled, and is stated in *Sohn v. Waterson*, 17 Wall, 596. The statute of limitations prescribed by the Transportation Act of 1920 applies to actions brought against the Government by a carrier to recover its charges, but it does not defeat causes of action which arose before its passage if suit be brought within three years after the passage of the act and within six years from the accrual of the right of action. In other words, the general statute of limitations of six years applicable to suits in the Court of Claims, being jurisdictional, applies to all actions unless waived by statutory enactment relative to the particular case, and the limitation of three years prescribed by the Transportation Act may apply as above stated. But when suit is brought on a cause of action arising before the late statute, and this statute is alone relied upon, the limitation it prescribes begins to run from the date of the enactment of the statute. *Sohn v. Waterson, supra.* The plaintiff is entitled to a judgment in the sum of $21,946.69. And it is so ordered."

Here, again, the Court of Claims merely expressed the opinion that the three-year period of limitation prescribed by the Transportation Act of 1920 applied, under certain circumstances, to proceedings by the railroads in the Court of Claims, without any apparent consideration of the purposes of the statute.

So, in the case of *Wabash Railway Company v. United States*, 59 C. Cls. 322, decided March 3, 1924 (now on appeal to this court and one of the cases in which this brief is being filed), the Court of Claims merely assumed that the three-year period of limitation in the Transportation Act of 1920 would apply to suits by a railroad company in the Court of Claims arising out of transportation services rendered the Government, but held that said statute was inap-

plicable to the case before it because, as it said, such statute "does not begin to run against claims which arose before its enactment until the date of the passage of the act." It therefore gave judgment for the plaintiff for the amount claimed.

So, also, in *St. Louis, San Francisco & Texas Ry. Co. v. United States*, (the other case on appeal to this court in which this brief is being filed), the court gave judgment for the plaintiff, merely referring, in the memorandum accompanying said judgment, to the cases of *Schaff, Receiver of the Missouri, Kansas & Texas Ry. Co.* 59 C. Cls. 318, and the *Wabash Railway Co.*, 59 C. Cls. 322, *supra.*

In all of the above cases, it will be noted, including the two now pending on appeal in this court, the Court of Claims, while intimating that it thought (without, we submit, any careful consideration of the matter or any analysis of the statute), that the three-year statute of limitations in the Transportation Act of 1920 applied to suits by common carriers in the Court of Claims, nevertheless held in the particular instance that said three-year statute of limitations was not applicable.

In only one instance, so far as we are aware, has the Court of Claims actually applied the three-year statute of limitations and that was in the case of *Lancaster & Wallace, Receivers of the Texas & Pacific Railway* (C. Cls. No. C-112 on the docket of that court), decided by the Court of Claims on December 1, 1924, in which case the Court of Claims as to one item held, in a memorandum opinion (not yet reported):

> "(3) The defendant contends that one item of the claim, bill T-1505, is barred by the statute of limitations of three years imposed by section 424 of the Transportation Act of February 28, 1920, 41 Stat. 491-492. The transportation for which claim was made by this bill was rendered March 22, 1917, this suit was brought March 21, 1923, and this court has held that the provision of the Transportation Act relied on

applies, and the item of $4,701.20 is barred. *Schaff, Receiver of the Missouri, Kansas & Texas Railway Company of Texas, v. The United States,* No. 241-A, 59 C. Cls—. The rule of the Atchison, Topeka & Santa Fe case, 58 C. Cls. 583, as to laches, is not applicable here."

Here, again, it will be seen that the Court of Claims merely relied upon its former observation in the Schaff case without any greater consideration of the provisions of the Transportation Act of 1920 or of the purpose of Congress in enacting the three-year limitation contained therein.

In short, it appears that the Court of Claims has undertaken to hold that its jurisdiction has been abridged, so far as concerns suits by railroad companies in said court arising out of transportation services for the Government, without any inquiry as to the purpose of Congress in enacting the three-year limitation in the Transportation Act of 1920 with respect to "actions" at law by carriers subject to the Interstate Commerce Act for the collection of their charges, or any careful consideration of the policy of Congress with respect to the transportation by said carriers of persons and property for the United States, as expressed in the Interstate Commerce Act as a whole, whereas, if it had done so, it must have perceived that in said provision of the Transportation Act Congress was dealing only with actions by carriers against private shippers, and had no intention of disturbing the relations theretofore existing between such carriers and the United States with respect to Government transportation, and payment therefor.

IV.

The Act of June 7, 1924, Chap. 325 (43 Stat. 633).

We have set out above the amendments to paragraph (3) of the Section 16 of the Interstate Commerce Act made by the Act of June 7, 1924.

The changes and additions to said paragraph (3) made

by this Act of June 7, 1924, are immaterial so far as the question here under consideration is concerned, said statute reenacting the three-year limitation contained in the Transportation Act as to "actions at law" by carriers for the collection of their charges, and the provision as to when the "cause of action" should be deemed to accrue, in precisely the same terms as they were originally enacted, although their arrangement in said paragraph is different.

Since, for the reasons above stated, the limitation of three years upon the bringing of "actions at law" by carriers subject to the Act to Regulate Commerce for the recovery of their charges, provided by the Transportation Act of 1920, was not intended to apply to a proceeding by a carrier subject to the Act in the Court of Claims for the establishment of a claim against the United States arising out of transportation services rendered by it to the Government, it is apparent that the amendatory Act of June 7, 1924 is not to be given any different construction, there being nothing in the latter Act to suggest or require any extention of its inhibitions to proceedings in the Court of Claims by a carrier of the character stated. It is unnecessary, therefore, to determine, in the cases now before the court, the exact meaning of subdivision (h) of said paragraph 3 added by the amendatory Act of June 7, 1924 providing that "the provisions of this paragraph (3) shall extend to and embrace cases in which the cause of action has heretofore accrued as well as cases in which the cause of action may hereinafter accrue." etc., since the statute as a whole has no application to proceedings by carriers of the character stated in the Court of Claims.

V.

CONCLUSION.

In conclusion, we submit that the two statutes—the Judicial Code, Section 156, and the amendments to the Interstate Commerce Act under consideration here—relate to entirely different subject-matters, and that the three-year limitation in the latter Interstate Commerce Act as so amended has no application whatsoever to "claims" by railroad companies against the United States in the Court of Claims growing out of their charges for Government transportation, but relates entirely to "actions at law" brought by carriers against private shippers in the ordinary courts of the land for the recovery of their charges, the prompt collection of which charges from private shippers Congress was alone seeking to enforce.

Respectfully submitted,

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